

FILED

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 DAMIEN A. NINO,

17 Defendant.

No. CR 02-0060 WHA

PLEA AGREEMENT

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19 I, Damien A. Nino, and the United States Attorney's Office for the Northern
20 District of California (hereafter "the government") enter into this written plea agreement
21 (the "Agreement") pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal
22 Procedure:

23 The Defendant's Promises

24 1. I agree to plead guilty to the captioned information charging me with
25 possessing child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B). I agree that
26 the elements of the offense and the maximum penalties are as follows:

27

28

PLEA AGREEMENT
United States v. Damien Nino,
No. CR 02-0060 WHA

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- 1 Elements: 1. I knowingly possessed computer hard drives or disks;
2 2. These computer hard drives or disks contained images of child
3 pornography set forth in 18 U.S.C. § 2256(8)(A);
4 3. The images of child pornography either (1) themselves traveled in
5 interstate or foreign commerce by any means, including by computer,
6 or (2) were produced (i.e., copied onto digital media) using materials
7 that have traveled in interstate commerce; and
8 4. I knew, on the date in question, that such images of child
9 pornography were contained on the computer hard drives or disks at
10 issue.

11 Maximum Penalties:

- 12 a. Maximum prison sentence 10 years
13 b. Mandatory minimum prison sentence 2 years
14 c. Maximum fine \$ 250,000
15 c. Maximum supervised release term 3 years
16 d. Mandatory special assessment \$ 100
17 e. Registration as a sex offender under 18 U.S.C. § 4042(c).

18 I understand that, as a result of my prior conviction for annoying or molesting a
19 child under 18, I am subject to a mandatory minimum prison sentence of 2 years. See 18
20 U.S.C. § 2252A(b)(2).

21 2. I agree that I am guilty of the offense to which I will plead guilty, and I
22 agree that the following facts are true:

23 a. In or about November of 1988, in Santa Cruz, California, I was convicted
24 of one misdemeanor count of Annoying or Molesting a Child Under 18, in violation of
25 California Penal Code Section 647.6.

26 b. On January 4, 2001, when I was stopped and subsequently arrested by
27 officers from the San Francisco Police Department, I had in my possession a laptop
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1 computer containing numerous images of child pornography. I knew at the time of this
2 arrest that the hard drive on this computer contained, among other things, dozens of
3 photographs of prepubescent boys engaging in anal or oral copulation with adults or other
4 children, and the lascivious exhibition of their genitals.

5 c. On January 4, 2001, when officers of the San Francisco Police Department
6 searched my Larkin Street apartment, I had in my possession a desktop computer
7 containing numerous images of child pornography. I knew at the time of this search that
8 the hard drive on this computer contained, among other things, many photographs of
9 prepubescent boys engaging in lascivious exhibition of their genitals, as well as anal or
10 oral copulation with adults or other children.

11 d. On April 28, 2001, when I was arrested by the California Highway Patrol, I
12 had in my possession a laptop computer containing numerous images of child
13 pornography. I knew at the time of this arrest that the hard drive on this computer
14 contained, among other things, dozens of photographs of prepubescent boys engaging in
15 anal or oral copulation with adults or other children, and the lascivious exhibition of their
16 genitals.

17 e. On September 19, 2001, when I was arrested by the San Francisco Police
18 Department a second time, I had in my possession a desktop computer containing
19 numerous images of child pornography. I knew at the time of this arrest that the hard
20 drive on this computer contained, among other things, dozens of photographs of
21 prepubescent boys engaging in anal or oral copulation with adults or other children, and
22 the lascivious exhibition of their genitals.

23 f. I acknowledge that each of the computer hard drives referenced in
24 paragraphs (b) through (e) above were manufactured outside of the United States, and
25 therefore traveled in interstate and foreign commerce. I also acknowledge and agree that
26 among the images of child pornography I possessed were numerous depictions of actual
27 minor children engaging in sexual activities.

1 3. I agree to give up all rights that I would have if I chose to proceed to trial,
2 including the rights to a jury trial with the assistance of an attorney; to confront and cross-
3 examine government witnesses; to remain silent or testify; to move to suppress evidence
4 or raise any other Fourth or Fifth Amendment claims; to any further discovery from the
5 government, as may be limited by United States v. Ruiz, 241 F.3d 1157 (9th Cir. 2001);
6 and to pursue any affirmative defenses and present evidence.

7 4. I agree to give up my right to appeal my conviction, the judgment, and
8 orders of the Court. I also agree to waive any right I may have to appeal my sentence,
9 except that I reserve my right to appeal the sentence if the Court determines that my
-10 adjusted offense level under the Sentencing Guidelines is greater than 18.

11 5. I agree not to file any collateral attack on my conviction or sentence,
12 including a petition under 28 U.S.C. §2255, at any time in the future after I am sentenced,
13 except for a claim that my constitutional right to the effective assistance of counsel was
14 violated.

15 6. I agree not to ask the Court to withdraw my guilty plea at any time after it is
16 entered.

17 7. I agree that the Sentencing Guidelines should be calculated as follows, and
18 that I will not ask for any other adjustments to, reductions of, or downward departures
19 from the offense level:

20	a.	Base Offense Level, U.S.S.G. § 2G2.4(a):	15
21	b.	Specific offense characteristics (prepubescent minors; more than 10 items; 22 use of a computer):	6
23	c.	Acceptance of responsibility: (If I meet the requirements of 24 U.S.S.G. § 3E1.1)	<u>-3</u>
25	d.	Adjusted offense level	18

26 I agree that, regardless of any other provision in this agreement, the government may and
27 will provide to the Court and the Probation Office all information relevant to the charged
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1 offenses or the sentencing decision. I also agree that the Court is not bound by the
2 Sentencing Guidelines calculations above, the Court may conclude that a higher guideline
3 range applies to me, and, if it does, I will not be entitled, nor will I ask, to withdraw my
4 guilty plea.

5 8. I agree that I will make a good faith effort to pay any fine, forfeiture or
6 restitution I am ordered to pay. Before or after sentencing, I will, upon request of the
7 Court, the government, or the U.S. Probation Office, provide accurate and complete
8 financial information, submit sworn statements and give depositions under oath
9 concerning my assets and my ability to pay, surrender assets I obtained as a result of my
10 crimes, and release funds and property under my control in order to pay any fine,
11 forfeiture, or restitution. I agree to pay the special assessment at the time of sentencing.

12 9. I agree not to commit or attempt to commit any crimes before sentence is
13 imposed or before I surrender to serve my sentence. I also agree not to violate the terms
14 of my pretrial release (if any); intentionally provide false information to the Court, the
15 Probation Office, Pretrial Services, or the government; or fail to comply with any of the
16 other promises I have made in this Agreement. I agree that, if I fail to comply with any
17 promises I have made in this Agreement, then the government will be released from all of
18 its promises below, but I will not be released from my guilty plea.

19 10. I agree to forfeit all of the computers and digital storage media that
20 contained images of child pornography. I am aware that this forfeiture is authorized
21 under 18 U.S.C. § 2253 and I agree not to contest this forfeiture in any way.

22 11. I agree that this Agreement contains all of the promises and agreements
23 between the government and me, and I will not claim otherwise in the future.

24 12. I agree that this Agreement binds the U.S. Attorney's Office for the
25 Northern District of California only, and does not bind any other federal, state, or local
26 agency.

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The Government's Promises

13. The government will move to dismiss the indictment pending against the defendant in this case at the time of sentencing.

14. The government agrees not to file or seek any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned information, specifically excluding any charges relating to crimes of violence or production of child pornography .

15. The government agrees to recommend the Guidelines calculations set out above.

The Defendant's Affirmations

16. I confirm that I have had adequate time to discuss this case, the evidence, and this Agreement with my attorney, and that he has provided me with all the legal advice that I requested.

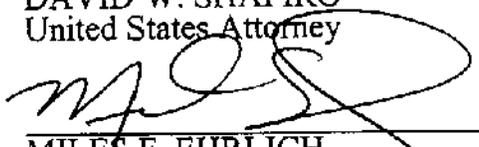
17. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine.

18. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defenses, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this agreement.

Dated: 6/18/02


DAMIEN A. NINO
Defendant

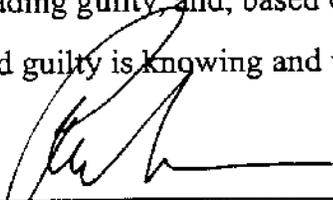
Dated: 6/17/02

DAVID W. SHAPIRO
United States Attorney

MILES F. EHRLICH
Assistant United States Attorney

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I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights he is giving up by pleading guilty, and, based on the information now known to me, his decision to plead guilty is knowing and voluntary.

Dated: 6/18/02



ROBERT WAGGENER
Attorney for Defendant